

FEB 27 1984

ALEXANDER L. STEVAS  
CLERK

No. 83-724

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

KATHRYN R. ROBERTS, Acting Commissioner  
Minnesota Department of Human Rights;  
HUBERT H. HUMPHREY, III, Attorney General  
of the State of Minnesota; and GEORGE A. BECK,  
Hearing Examiner of the State of Minnesota,  
*Appellants,*

vs.

THE UNITED STATES JAYCEES, a non-profit  
Missouri corporation, on behalf of itself and its  
qualified members,  
*Appellee.*

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

**JOINT APPENDIX**

CARL D. HALL, JR.  
Counsel of Record  
6935 South Delaware Place  
Tulsa, Oklahoma 74136  
Telephone: (918) 492-6600

CLAY R. MOORE and  
MACKALL CROUNSE &  
MOORE

1600 TCF Tower  
Minneapolis, MN 55402  
*Counsel for Appellee*

HUBERT H. HUMPHREY, III  
Attorney General  
State of Minnesota

KENT G. HARBISON  
Counsel of Record  
Chief Deputy  
Attorney General  
102 State Capitol Bldg.  
St. Paul, MN 55155  
Telephone: (612) 296-2351  
*Counsel for Appellants*

Of Counsel:  
RICHARD L. VARCO, JR.  
Special Assistant  
Attorney General  
State of Minnesota

APPEAL DOCKETED OCTOBER 31, 1983  
PROBABLE JURISDICTION NOTED JANUARY 9, 1984

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1983

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No. 83-724

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KATHRYN R. ROBERTS, Acting Commissioner  
Minnesota Department of Human Rights;  
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ON APPEAL FROM THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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JOINT APPENDIX

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CHRONOLOGICAL LIST OF RELEVANT  
DOCKET ENTRIES

October 31, 1979—plaintiff's complaint filed in U. S. District Court for the District of Minnesota.

November 29, 1964—joint answer of defendants filed.

March 24, 1980—stipulation regarding certification of state law issue in the Minnesota Supreme Court and certification of state law issue to Minnesota Supreme Court filed.

May 28, 1981—Syllabus, opinion, and mandate from the Minnesota Supreme Court answering certified question in the affirmative returned to district court.

August 3, 1981—district court trial commenced.

March 25, 1982—judgment of the district court in favor of defendants and against plaintiff entered.

April 20, 1982—plaintiff's notice of appeal filed.

June 7, 1983—opinion and judgment of the Court of Appeals for the Eighth Circuit filed.

June 23, 1983—appellees' petition for rehearing and suggestion that rehearing being *en banc* filed (affidavit of service by mail on June 21, 1983 omitted in printing).

August 1, 1983—order denying petition for rehearing and suggestion for rehearing *en banc* filed.

October 11, 1983—notice of appeal to the Supreme Court of the United States filed.

APPENDIX

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION  
Civ. 4-79-530

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THE UNITED STATES JAYCEES, a non-profit  
Missouri corporation, on behalf of itself and its  
qualified members,

Plaintiff,

vs.

MARILYN E. McCCLURE, Commissioner, Minnesota  
Department of Human Rights, WARREN SPANNAUS,  
Attorney General of the State of Minnesota, and  
GEORGE A. BECK, Hearing Examiner of the  
State of Minnesota,

Defendants.

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COMPLAINT

For its complaint, the plaintiff United States Jaycees alleges as follows:

I.

JURISDICTION

(A) This is an action in which the plaintiff United States Jaycees seeks redress for the threatened deprivation of, rights, privileges and immunities secured by the Constitution of the United States. The acts of the defendants complained of herein were and are being committed under color of state law within the meaning of Title 42, U.S.C. Section 1983, and constitute state action within the meaning of the 14th amendment to the Constitution of the United States.

(B) Jurisdiction of this Court is conferred by Title 28, U.S.C. Section 1343 and Title 42, U.S.C. Section 1983; jurisdiction is also conferred upon this Court by Title 28, U.S.C. Section 1331, there being substantial federal questions asserted, and by Title 28, U.S.C. Section 1332, there being the requisite diversity of citizenship and the matter in controversy being of the value of \$10,000 or more exclusive of costs and interest.

## II.

### PARTIES

(A) The plaintiff United States Jaycees is a non-profit corporation organized under the laws of the State of Missouri with its principal place of business in Tulsa, Oklahoma. The plaintiff is a membership organization in which there are several classes of membership, including state chapters known as State Organization Members and local chapters known as Local Organization Members and Individual Members which are defined generally in the plaintiff's By-Laws as young men between the ages of 18 and 35. Qualified Local Organization Members are those chapters whose voting members and officers and directors are young men between the ages of 18 and 35.

This action, and the state proceedings referred to herein, arises out of the fact that, by the terms of the By-Laws of the plaintiff United States Jaycees, women are not eligible to be Individual Members of the United States Jaycees nor may a local chapter qualify as a Local Organization Member if said chapter permits women to act as voting members or officers or directors thereof.

(B) The defendant Marilyn E. McClure is the Commissioner of the Department of Human Rights of the State of Minnesota and, in such capacity, is the successor to William

L. Wilson who, as the immediately prior Commissioner, instituted the state proceedings referred to herein pursuant to Minnesota Statutes, Chapter 363.

(C) The defendant Warren Spannaus is the Attorney General of the State of Minnesota. In his official capacity, and pursuant to the provisions of state law, he has collaborated with the previous Commissioner Wilson and defendant McClure in the institution of the state proceedings referred to herein.

(D) The defendant George A. Beck is a State Hearing Examiner assigned to the state proceedings described herein and is the official of the State of Minnesota issuing the Order of October 9, 1979, complained of herein.

### III.

#### STATE PROCEEDINGS

(A) On or about January 25, 1979, the prior Commissioner Wilson, represented by the defendant Spannaus, issued and served a complaint upon the plaintiff United States Jaycees pursuant to Minn. Stat. §363.06 Subd. 4(2) in which Wilson claimed that the United States Jaycees, the Minnesota Jaycees, the Minneapolis Jaycees, and the St. Paul Jaycees were "places of public accommodation" within the meaning of Minn. Stat. §363.01 Subdivision 18 and that the United States Jaycees had threatened to expel the Minneapolis Jaycees and the St. Paul Jaycees as Local Organization Members because said local chapters had permitted women to serve as officers and directors of those local organizations. This threatened action, it was alleged, violated the provisions of Minn. Stat. §363.03, Subdivisions 3, 6 and 7, which prohibit discrimination by reason of sex in "places of public accommodation" as defined in §363.01 Subdivision 18. Said Complaint is attached hereto as Exhibit A.



(B) On or before March 1, 1979, the United States Jaycees filed and served its answer to the aforesaid complaint in which, *inter alia*, it denied the application of the definition of a "place of public accommodation" as set forth in Minn. Stat. §363.01 Subdivision 18, and the enforceability of Minn. Stat. §363.03 Subdivisions 3, 6 and 7 against the United States Jaycees.

(C) Said answer, attached hereto as Exhibit B, further specifically reserved for determination by the United States District Court, the federal Constitutional objections asserted in this complaint to the enforceability of Minn. Stat. §363.03 Subdivisions 3, 6 and 7 against the United States Jaycees. This reservation was made in accordance with the procedure and authority of *England vs. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 11 L.Ed.2d 440, 84 S.Ct. 461 (1964).

(D) Said state proceeding came to hearing before State Hearing Examiner George A. Beck on April 23-24, 1979, pursuant to Chapter 363, Minnesota Statutes, at which time the parties presented their evidence and testimony. After submission of briefs, the record in that proceeding was closed on September 11, 1979.

(E) On October 9, 1979, Examiner Beck issued his Findings of Fact, Conclusions of Law and Order (attached as Exhibit C hereto)\* in said proceedings which, by reason of Minn. Stat. §363.071, Subd. 2, is administratively final and effective for all purposes subject only to review by the district court of the State of Minnesota and subject further to a stay thereof pending such review, if said stay should be granted by the state court.

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\* This document is found at page 93 in the Appendix to the printed Jurisdictional Statement and is therefore deleted from this Appendix.

(F) Said Order of Examiner Beck enjoined plaintiff The United States Jaycees and ordered plaintiff to cease and desist from, in substance, (1) revoking the charter of any Jaycee local organization member or state organization member which extends to women full membership privileges and (2) from otherwise discriminating against any individual member or applicant for membership in the Jaycees, all as more particularly set forth in Examiner Beck's Order of October 9, 1979.

(G) Proceedings for review of said Order will be commenced pursuant to Minnesota Statute §15.0424 in the courts of the State of Minnesota on or before November 8, 1979, but, by reason of state law, the injunction and cease and desist order of October 9, 1979 is presently effective and operates to deprive the plaintiff The United States Jaycees of the constitutional rights asserted hereinbelow and will continue to do so unless and until the courts of Minnesota either stay or reverse and vacate said order.

#### IV.

#### CLAIMS FOR RELIEF

(A) The plaintiff realleges Parts I, II and III hereof in their entirety.

(B) The enforcement of Minn. Stat. §363.03 Subdivisions 3, 6 and 7 against the plaintiff United States Jaycees is being conducted under color of state law within the meaning of Title 42, United States Code, Section 1983 and constitutes state action within the meaning of the Fourteenth Amendment to the Constitution of the United States.

(C) The enforcement of said Minnesota Statutes and the Order of Examiner Beck of October 9, 1979 against the United States Jaycees threatens to deprive, and does deprive, the United States Jaycees of rights, privileges and immunities

guaranteed by the Constitution of the United States in the following respects:

(1) *Deprivation of the Right  
of Freedom of Association*

By her complaint in the state proceeding described herein, and by his Order of October 9, 1979, the defendants McClure and Beck, with the assistance of defendant Spannaus, seek to effectively deprive the plaintiff The United States Jaycees and its members from determining the composition of its membership and its ownership on such terms as they see fit. By so doing, the defendants seek to deprive, and have deprived, the plaintiff The United States Jaycees and its members of the right of freedom of association and the cognate right of freedom not to associate guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

(2) *Void for Vagueness*

The enforceability of said Minnesota Statutes against the plaintiff in the manner sought by the defendants in the pending state proceedings depends upon whether the United States Jaycees or its local chapters in Minnesota are "places of public accommodation" within the meaning of Minn. Stat. §363.01 Subd. 18 which reads:

"18. *Public Accommodations.* 'Place of public accommodation' means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold or otherwise made available to the public."

Said definition clearly encompasses such things as restaurants, bars, hotels, movies and bus lines, but con-

tains no language which a person of ordinary intelligence would rationally construe to include the United States Jaycees and like organizations. In particular, the United States Jaycees or its local chapters cannot be reasonably held to be a "business, accommodation, refreshment, entertainment, recreation, or transportation *facility* \* \* " given the ordinary meaning of that language.

If, however, by the process of statutory construction in the pending state proceedings, the ordinary meaning of said definition is extended to include the plaintiff, said definition becomes constitutionally defective in that it fails to provide adequate notice to the United States Jaycees and like organizations that they are or are not within the class of entities which are subject to the requirements of Minn. Stat. §363.03 Subds. 3, 6 and 7. Moreover, said statutes, if so interpreted, fail to adequately circumscribe the powers and duties of the defendants and others charged with enforcement thereby threatening to expose organizations such as the plaintiff to the individual whim and caprice of those state officials. Said statutes, if so interpreted, threaten furthermore to produce arbitrary and capricious enforcement against some organizations like the plaintiff but not against others similarly constituted and thereby to violate the Equal Protection Clause of the Fourteenth Amendment.

In the light of the potentially punitive and criminal consequences of a violation of Minn. Stat. §363.03 Subds. 3, 6 and 7, and in the light of the fact that the enforcement thereof as to plaintiff threatens to infringe upon the constitutional right of freedom of association, said statutes, if so interpreted by the appropriate tribunals and courts of the State of Minnesota, are void, both

facially and as applied to this plaintiff, as violative of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

(D) A controversy exists within the meaning of Title 28, U.S.C. Section 2201 et seq. and the plaintiff United States Jaycees is entitled to a judgment declaring that the aforementioned Minnesota Statutes may not be constitutionally enforced against the plaintiff by the defendants and, in addition, is entitled to injunctive relief restraining and adjoining the defendants from so attempting to enforce those statutes in the circumstances presented herein.

V.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff United States Jaycees, on behalf of itself and its qualified members, prays:

(1) That a judgment be rendered declaring that Minnesota Statutes Section 363.01 Subdivision 18 and Section 363.03 Subdivisions 3, 6 and 7 are, both facially and as applied to the United States Jaycees under the circumstances presented herein, void, invalid and unenforceable as violative of the Constitution of the United States, enforcing and attempting to enforce Minn. Stat. §363.03, Subdivisions 3, 6 and 7 against the United States Jaycees.

(2) That the Court abstain, however, from a determination of the merits of the Federal Constitutional issues asserted herein until the state proceedings described herein have been concluded by final judgment.

(3) If by final judgment, the appropriate tribunals and courts of the State of Minnesota, interpret Minn. Stat. 363.01 Subdivision 18 and Minn. Stat. §363.03 Subdivisions 3, 6 and 7 to apply to the plaintiff United States Jaycees, and if the relief sought by the defendant Commissioner in said

state proceedings is granted in whole or in part, then the plaintiff prays that a permanent injunction issue restraining and enjoining the defendants, their successors in office, and their agents and representatives from the enforcement or attempted enforcement of said Minnesota Statutes or any such judgment rendered in said state proceedings.

(4) That the Court issue and decree such other relief as it may deem appropriate in the circumstances and award such costs, attorneys fees and damages as may be proven and allowable herein.

Dated: October 29, 1979.

**MACKALL, CROUNSE &  
MOORE**

**By: CLAY R. MOORE**

**And**

**By: FRANK A. DVORAK**

**Attorneys for the Plaintiff**

**The United States Jaycees**

**100 First National Bank**

**Building**

**Minneapolis, Minnesota 55402**

**Telephone: (612) 333-1341**

**Of Counsel:**

**CARL D. HALL, JR.**

**HALL, SUBLETT, McCORMICK**

**& ANDREW**

**1776 One Williams Center**

**Tulsa, Oklahoma 74103**

**Telephone: (918) 582-8815**



EXHIBIT "A"

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BEFORE THE HUMAN RIGHTS DEPARTMENT  
OF THE STATE OF MINNESOTA

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STATE OF MINNESOTA, by  
WILLIAM L. WILSON, Commissioner,  
Department of Human Rights,  
Complainant,  
vs.  
THE UNITED STATES JAYCEES,  
Respondent.

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COMPLAINT

The State of Minnesota, by William L. Wilson, Commissioner, Minnesota Department of Human Rights alleges that:

1. This complaint is issued pursuant to Minn. Stat. § 363.06 (1978) and HumRts 107(e).
2. The Hearing Examiner has jurisdiction of this matter pursuant to Minn. Stat. §§ 363.071 and 15.052 (1978).
3. Respondent United States Jaycees ("U. S. Jaycees") is a Missouri corporation and has its principal place of business in Tulsa, Oklahoma. It is organized, *inter alia*, in order to encourage and develop the formation of young men's civic organizations throughout the United States.
4. Classes of membership in the U. S. Jaycees include that of State Organization Member, Local Organization Member, ("Jaycee chapter"), and Individual Member. Females are prohibited from becoming Individual Members of the U. S. Jaycees. Any young men's organization of good repute existing in the United States, which is organized for purposes similar to and consistent with U. S. Jaycee by-laws and whose

officers are young men between the ages of 18 and 35 is eligible for affiliation with the U. S. Jaycees as a Jaycee chapter. At all times relevant herein the U. S. Jaycees has been and continue to be engaged in efforts to increase the size and numbers of Jaycee chapters throughout Minnesota.

5. The Minneapolis and St. Paul Jaycees are local Jaycee chapters. The Minnesota Jaycees is affiliated with the U.S. Jaycees as a State Organization Member. Male members of Jaycee chapters in Minnesota are affiliated with the U. S. Jaycees through their local chapters.

6. At all times relevant herein membership in the Minneapolis and St. Paul Jaycees has been obtainable by any individual between the ages of 18-35 upon the filing of a written application and payment of the required annual dues. At all times relevant herein, the Minneapolis and St. Paul chapters have transmitted a portion of each of its members dues to the U. S. Jaycees.

7. Affiliation with the U. S. Jaycees permits Jaycee chapters to use the Jaycee name and gives them access to the good will which has been built up around the Jaycee name, information and guidance from the U. S. Jaycees regarding the presentation of civic programs, advice from the U. S. Jaycees regarding the solicitation and retention of members, and the opportunity to participate in state and national Jaycee meetings and elections. Affiliation with the U. S. Jaycees is conditioned upon compliance with U. S. Jaycee by-laws.

8. The U. S., Minnesota, St. Paul and Minneapolis Jaycees are public accommodations within the meaning of Minn. Stat. § 363.01 subd. 18 (1978).

9. The Minneapolis and St. Paul Jaycees, contrary to U. S. Jaycee by-laws, allow female members to serve as officers



and directors of the respective chapters. As a result of this conduct, the U. S. Jaycees has denied the Minneapolis and St. Paul Jaycees membership privileges accorded them pursuant to U. S. Jaycee by-laws.

10. On or about December 15, 1978, the U. S. Jaycees informed the Minneapolis and St. Paul Jaycees that on January 19, 1979, a motion would be made at the U. S. Jaycee Executive Board of Directors meeting to revoke their respective charters. At that time, the Minneapolis and St. Paul Jaycees were also informed that the above mentioned revocation procedure would be halted upon a showing that no female member was an officer or director of their chapter.

11. The U. S. Jaycees have thereby committed unfair discriminatory practices in violation of Minn. Stat. § 363.03 subd. 3 (6) and (7) (1978).

12. On or about December 14, 1978, members of the St. Paul Jaycees filed a charge of discrimination against the respondent with the Department. That charge was served on respondent on December 15, 1978.

13. On or about December 19, 1978, members of the Minneapolis Jaycees filed a charge of discrimination against respondent with the Department. That charge was served on respondent on December 20, 1978.

14. The Department conducted an investigation of the allegations in the above mentioned charges.

15. On or about January 9, 1979, complainant found probable cause to believe that respondent had committed unfair discriminatory practices.

WHEREFORE, complainant prays that the Hearing Examiner issue an order enjoining respondent from:

1. Discriminating against any member or future member of any Jaycee chapter in Minnesota on the basis of sex with respect to the terms, conditions, or privileges of membership in the United States Jaycees or the Minnesota Jaycees or its local Jaycee chapters.

2. Revoking the charter, denying any privilege or right of membership, or otherwise discriminating in any manner against any Minnesota Jaycee chapter or against the Minnesota Jaycees on the basis that either accords or has accorded female members all of the rights and privileges of membership that are accorded male members.

3. Such other relief as the Examiner believes to be just and proper.

Dated: January 25, 1979

WILLIAM L. WILSON

Commissioner

Department of Human Rights

WARREN SPANNAUS

Attorney General

State of Minnesota

By: RICHARD L. VARCO, JR.

Special Assistant

Attorney General

240 Bremer Building

St. Paul, MN 55101

(612) 296-7862

Attorneys for Complainant

BEFORE THE HUMAN RIGHTS DEPARTMENT  
OF THE STATE OF MINNESOTA

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STATE OF MINNESOTA, by  
WILLIAM L. WILSON, COMMISSIONER,  
Department of Human Rights,

Complainant,

vs.

THE UNITED STATES JAYCEES,

Respondent.

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NOTICE AND ORDER FOR HEARING  
TO THE ABOVE-NAMED RESPONDENT:

Please take notice that, pursuant to Minn. Stat. § 363.06 subd. 4(a) (1978), William L. Wilson, Commissioner, Department of Human Rights (hereinafter "complainant"), hereby orders that a hearing be held on the allegations contained in the complaint issued in the above-entitled matter. Said hearing will be held on April 23 and 24, 1979, at nine o'clock in the forenoon, at 240 Bremer Building, Seventh and Robert Streets, St. Paul, Minnesota 55101. George Beck, Office of Hearing Examiners, 1745 University Avenue, Room 300, St. Paul, Minnesota 55104, Telephone (612) 296-8108, will serve as Hearing Examiner. You may retain legal counsel for this proceeding.

The hearing will be conducted in accordance with HumRts 101-124 and 9 MCAR § 2.201-2.222, copies of which may be obtained from the Documents Section of the Department of Administration. You are required by HumRts 108 to serve an answer upon the Hearing Examiner and complainant's attorney within 20 days after service of the complaint upon you. If you intend to appear at the hearing, you are further required by 9 MCAR § 2.205 to file a Notice of Appearance with the Hearing Examiner within 20 days after service of

the Notice and Order for Hearing. Failure to answer the complaint or to appear at the hearing shall be deemed an admission of the allegations of the complaint.

If you wish to discuss informal disposition or discovery, you may contact complainant's attorney.

Dated: January 25, 1979

WILLIAM L. WILSON  
Commissioner  
Department of Human Rights

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EXHIBIT "B"

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BEFORE THE HUMAN RIGHTS DEPARTMENT  
OF THE STATE OF MINNESOTA

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STATE OF MINNESOTA, by  
WILLIAM L. WILSON, Commissioner,  
Department of Human Rights,  
Complainant,  
vs.  
THE UNITED STATES JAYCEES,  
Respondent.

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ANSWER OF RESPONDENT  
THE UNITED STATES JAYCEES

For its answer to the Complaint, the respondent United States Jaycees, pleads and alleges as follows:

I.

Unless specifically admitted or otherwise responded to herein, all allegations of the Complaint are denied and the complainant Commissioner is put to his strict proof thereof.

II.

As to paragraph 1 of the Complaint, respondent admits that the Complaint is purportedly issued pursuant to Minn.

Stat. §363.06. Respondent denies, however, that the Complaint is issued pursuant to regulation HumRts 107(e), there being no allegations in the Complaint which bring this proceeding within the provisions of HumRts 107(e). The respondent further denies that the requirements for certification of this proceeding under HumRts 107(e) are present and alleges that the nature of this proceeding, the substantive issues raised and the nature of the relief sought render a certification of this proceeding under HumRts 107(e) wholly unnecessary and unreasonably cumbersome.

### III.

As to paragraph 2 of the Complaint, respondent admits, pursuant to Minn. Stat. §363.071 and Minn. Stat. §15.052, all hearings in this matter other than those in connection with judicial review are required to be held before a hearing examiner assigned by the State Office of Hearing Examiners. Respondent denies however that the Hearing Examiner or any other agency or court of the State of Minnesota has personal jurisdiction of the respondent, The United States Jaycees.

### IV.

As to paragraph 3 of the Complaint, respondent alleges that it is a non-profit corporation, organized under the laws of the State of Missouri, with its principal place of business in Tulsa, Oklahoma. The corporate purpose of the respondent, The United States Jaycees is stated in Article 2A of its By-Laws to-wit:

"2A. This Corporation shall be a non-profit Corporation, organized for such educational and charitable purposes as will promote and foster the growth and development of young men's civic organizations in the United States, designed to inculcate in the individual membership of such organization a spirit of genuine Americanism

and civic interest, and as a supplementary educational institute to provide them with opportunity for personal development and achievement and an avenue for intelligent participation by young men in the affairs of their community, state and nation, and to develop true friendship and true understanding among young men of all nations".

## V.

Respondent admits the allegations of paragraph 4 but alleges that the classes of membership in the respondent include State Organization Member, Local Organization Member, Individual Member, Associate Individual Member, Honorary Member, Life Member, and Sustaining Member, and that the definitions and requirements for each of which are set forth in Article 4 of the respondent's By-Laws.

Respondent further alleges that women are not eligible to be Individual Members of the respondent but are eligible to be Associate Individual Members as defined in Article 4 of respondent's By-Laws. Associate Individual Members of the respondent may and do participate in all activities of the respondent except that, by reason of Article 4-3 of the respondent's By-Laws, an Associate Individual Member may not vote nor act as an officer or director of the respondent United States Jaycees, nor of any qualified State Organization Member or qualified Local Organization Member.

## VI.

As to paragraph 5 of the Complaint, the respondent alleges that the Minneapolis Jaycees and the St. Paul Jaycees have been Local Organization Members of the respondent and the Minnesota Jaycees has been a State Organization Member. The respondent denies that said Minneapolis Jaycees and St. Paul Jaycees are presently qualified as Local Organization Members.



Qualified male members of qualified Local Organization Members in Minnesota are, by virtue of such membership, Individual Members of the respondent United States Jaycees.

VII.

As to paragraph 6 of the Complaint, the respondent alleges upon information and belief that the Minneapolis Jaycees and the St. Paul Jaycees have permitted women to be voting members and to serve as officers and directors in their respective organizations. In so doing, the Minneapolis Jaycees and St. Paul Jaycees have disqualified themselves as Local Organization Members of the respondent by reason of By-Law 4-4 of the respondent's By-Laws which, among other restrictions, restricts membership of a Local Organization to those Local Organizations whose voting members, officers and directors are young men.

Respondent denies that the Minneapolis Jaycees and the St. Paul Jaycees have transmitted a portion of their members' dues to the United States Jaycees and affirmatively alleges that only the Minnesota Jaycees, the State Organization Member, has transmitted any portion of its dues to the United States Jaycees.

VIII.

Respondent admits the general substance of the allegations of paragraph 7 of the Complaint but alleges that the rights, benefits, privileges and obligations of "affiliation" or membership in the respondent United States Jaycees are more fully set forth in the By-Laws and Policy Manual of the respondent and will be more accurately and completely stated in the evidence to be presented by respondent.

IX.

Respondent denies paragraph 8 of the Complaint in its entirety and alleges further:

(A) The respondent United States Jaycees, the Minnesota Jaycees and the Minneapolis and St. Paul Jaycees are not places of public accommodation within the meaning of Minn. Stat. §363.01 Subdivision 18, i.e., they are not, collectively or singularly, a "business, accommodation, refreshment, entertainment, recreation or transportation facility" nor do they or any of them extend, offer, sell or otherwise make available to the public "goods, services, facilities, advantages or accommodations" within the meaning of §363.01 Subdivision 18.

(B) The Minnesota Jaycees are not herein represented or complained against, nor has said organization filed a complaint against the respondent. The status of said Minnesota Jaycees under Minn. Stat. §363.03 Subdivision 3, 6 and 7, is therefore irrelevant and the complainant has no standing to assert any claim relating to the Minnesota Jaycees.

(C) The Minneapolis Jaycees and the St. Paul Jaycees are each private organizations which have previously sought admission and have been accepted as Local Organization Members of the respondent United States Jaycees and, in so doing, have voluntarily and without compulsion agreed to be bound, as a condition of their continued membership, by the By-Laws of the respondent. Said organizations have no lawful right to be members of the respondent, United States Jaycees or to continue as members of the respondent except and unless they conform to those conditions of membership as set forth in respondent's By-Laws and such other restrictions as may be imposed thereby. Each of said organizations has been and is now free to establish their own conditions of membership, select their own officers and directors, and to pursue such objectives as they see fit provided only that they may not do so under the name "Jaycees" (or any other protected mark owned by respondent) or as members of the



United States Jaycees unless they conform to the By-Laws of respondent and are and remain consistent in all things with purposes and objectives of the respondent.

X.

As to paragraph 9 of the Complaint, respondent admits that the Minneapolis Jaycees and the St. Paul Jaycees have ostensibly permitted certain women to serve as officers and directors of their respective organizations and that, as a result, the respondent has advised such chapters that they are subject to expulsion from membership in the United States Jaycees. Respondent denies that such chapters have been denied membership privileges accorded pursuant to United States Jaycees By-Laws but, on the contrary, the respondent has provided, and will continue to provide, said chapters full membership privileges pursuant to said By-Laws provided only that said chapters, in consideration, comply with the same By-Laws.

XI.

Respondent admits paragraphs 10, 12 and 13 of the Complaint.

XII.

Respondent denies paragraph 11 of the Complaint.

XIII.

As to paragraph 14 of the Complaint, the respondent is unaware of the nature, extent, thoroughness and objectivity of any alleged investigations by the Department and is therefore unable to confirm or deny that any investigation was conducted which conformed to the requirements and intention of Minn. Stat. §363.06 Subd. 4.

XIV.

As to paragraph 15 of the Complaint, the respondent admits that a finding of probable cause was ostensibly rendered by the complainant Commissioner, but respondent is unable to

confirm or deny that said finding was rendered after a full and reasoned judgment by the complainant consistent with the requirements and intention of Minn. Stat. §363.06 Subd. 4.

XV.

RESERVATION OF FEDERAL  
CONSTITUTIONAL CLAIMS

(A) Respondent hereby specifically reserves for determination by the United States District Court for the District of Minnesota, in an action to be commenced by respondent in said court, all federal constitutional claims challenging the validity of the Minnesota statutes invoked in these proceedings and the application of said statutes to the respondent under the circumstances presented herein. This reservation is made under the authority of *England vs. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 11 L.Ed.2d 440, 84 S.Ct. 461. If, for any reason, these constitutional challenges are unable to be fully litigated in the United States District Court, the respondent further reserves the right to assert said claims in these proceedings and in any proceeding involving judicial review hereof in the state courts of Minnesota.

(B) The federal constitutional challenges so reserved include, but are not limited to, the following:

1) Minn. Stat. §363.01 Subdivision 18 and Minn. Stat. §363.03 Subdivision 3, 6, 7, are, both facially and as applied to this respondent, void and invalid in that, contrary to the Fourteenth Amendment to the Constitution of the United States, Minn. Stat. §363.01 Subdivision 18 fails to provide a definition of "place of public accommodation" which is sufficiently precise so as to place any person or organization or the respondent on notice that they are or are not within the scope of said definition or that they are or are not subject to the potentially punitive and criminal consequences of a violation of §363.03 Subdivisions 3, 6 and 7.

2) Minn. Stat. §363.01 Subdivision 18 and §363.03 Subdivisions 3, 6 and 7 are violative of the First and Fourteenth Amendments to the Constitution of the United States in that said statutes and the application of said statutes to the respondent in the manner sought in this proceeding, deprives the respondent and its qualified members of the right of freedom of association.

(C) The purpose of this reservation is to secure to respondent the right to vindicate its federal constitutional rights in the United States District Court and to expose said claims herein solely for the purpose of permitting the appropriate tribunals of the State of Minnesota to interpret the Minnesota statutes involved in the light of the constitutional claims so reserved.

WHEREFORE, respondent prays that complainant take nothing by his complaint and that the same be dismissed.

Dated: February 26, 1979.

**MACKALL, CROUNSE &  
MOORE**

By: **CLAY R. MOORE**

And

**FRANK A. DVORAK**

**1000 First National Bank  
Building**

**Minneapolis, Minnesota 55402**

**612/333-1341**

**Attorneys for Respondent  
United States Jaycees**

Of Counsel:

**CARL D. HALL, JR.**

and

**HALL, SUBLETT, McCORMICK  
& ANDREWS**

**1776 Williams Center**

**Tulsa, Oklahoma 74103**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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Civil Action File No. 4-79-530

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THE UNITED STATES JAYCEES, a non-profit  
Missouri corporation, on behalf of itself and its  
qualified members,

Plaintiff,

vs.

MARILYN E. McCLURE, Commissioner,  
Minnesota Department of Human Rights,  
WARREN SPANNAUS, Attorney General of the State of  
Minnesota, and GEORGE A. BECK, Hearing Examiner  
of the State of Minnesota,

Defendants.

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JOINT ANSWER

Defendants for their answer to plaintiff's complaint herein  
admit, deny, and allege as follows:

1. As to paragraphs I(A) and (B) admit that the actions  
of defendants complained of in this matter were and are being  
committed under color of state law within the meaning of  
Title 42, U.S.C. Section 1983 and deny the remaining allega-  
tions.

2. Admit the allegations in paragraphs II(A), (B), (C),  
and (D) but deny that Warren Spannaus collaborated with  
William L. Wilson and Marilyn E. McClure in the institution  
of the state proceedings referred to in the complaint.

3. As to paragraphs III(A), (B), (C), and (F), to the  
extent that they quote from, paraphrase, or interpret the

provisions of Minnesota statutes; the complaint issued by William L. Wilson and served upon plaintiff on or about January 25, 1975; plaintiff's answer to that complaint; the findings of fact, conclusions of law, and order of defendant Beck, issued on October 9, 1979; or *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964), defendants refer the court to the texts thereof.

4. Admit the allegations in paragraph III(D).

5. Deny the allegations in paragraph III(E).

6. As to paragraph III(G), admit that by reason of state law, the injunction and cease and desist order of October 9, 1979, is presently effective and that proceedings for review of that order were commenced in the courts of the State of Minnesota prior to November 8, 1979, but deny the remaining allegations.

7. Inasmuch as paragraph IV(A) is a repetition of allegations pleaded elsewhere in the complaint, defendants repeat the respective answers, admissions, and denials originally pleaded to those allegations.

8. As to paragraph IV(B), admit that the enforcement of Minn. Stat. § 363.03 Subdivisions 3, 6 and 7 against the plaintiff United States Jaycees is being conducted under color of state law within the meaning of Title 42, United States Code, Section 1983 but deny that this enforcement constitutes state action within the meaning of the Fourteenth Amendment to the Constitution of the United States.

9. As to paragraphs IV(C) and IV(C)(1) and (2) admit that the enforcement of Minn. Stat. § 363.03 Subdivisions 3, 6 and 7 against plaintiff in the manner sought by defendants McClure and Spannaus in the pending state proceedings depends in part on whether the United States Jaycees or its local chapters in Minnesota are "places of public accommoda-

tion" within the meaning of Minn. Stat. § 363.01 Subd. 18 and deny the remaining allegations.

10. Deny the allegations in paragraph IV(D).

11. Except as expressly admitted, denied, or otherwise qualified above, deny each allegation, matter, fact and thing of the complaint.

#### SEPARATE DEFENSES

12. The complaint fails to state a claim upon which relief can be granted.

13. The court lacks jurisdiction over the subject matter of the complaint.

14. Plaintiff has failed to exhaust its state judicial remedies.

WHEREFORE, defendants pray plaintiff take nothing by its complaint, that plaintiff's complaint be dismissed, and that defendants be awarded their costs and disbursements herein.

Dated: November 26, 1979.

WARREN SPANNAUS

Attorney General

State of Minnesota

By: RICHARD L. VARCO, JR.

Special Assistant

Attorney General

240 Bremer Building

419 North Robert Street

St. Paul, Minnesota 55101

Telephone: (612) 296-7862

Attorneys for Defendants



UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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Civil No. 4-79-530

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THE UNITED STATES JAYCEES, a  
non-profit Missouri corporation, on behalf of  
itself and its qualified members,

Plaintiff,

-vs-

MARILYN E. McCLURE, Commissioner,  
Minnesota Department of Human Rights,  
WARREN SPANNAUS, Attorney General of the State of  
Minnesota, and GEORGE A. BECK, Hearing Examiner  
of the State of Minnesota,

Defendants.

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STIPULATION

The parties, by their respective undersigned counsel, hereby stipulate and agree as follows:

1) On October 31, 1979, the above entitled action was commenced in which the plaintiff, The United States Jaycees, challenged the validity, under the federal Constitution, of the interpretation and applicability to the plaintiff, of Minn. Stat. §§363.01, Subd. 18 and 363.03, Subd. 3. The federal constitutional issues presented cannot be reached, however, unless and until the state Courts of Minnesota have rendered an authoritative interpretation of said state statutes.

2) Also on October 31, 1979, the plaintiff herein filed and served its Petition for Review in the District Court of Ramsey County seeking to review the Order of October 9, 1979 of

State Hearing Examiner George Beck in which Examiner Beck held that The United States Jaycees were in violation of said state statutes and enjoined The United States Jaycees as set forth in Exhibit A attached hereto.\*

3) Despite the efforts of The United States Jaycees to advance the state review proceedings and to secure the early assignment of a state district judge to that case, the District Court of Ramsey County has refused to do so and it now appears that said review proceedings in state district court will not be finally determined for possibly another two years, thus effectively threatening to substantially delay the disposition of this action.

4) The plaintiff herein has advised defendants that, unless the litigation arising out of the underlying dispute is expedited, the plaintiff will seek a stay of Examiner Beck's Order with the Ramsey County District Court and, failing that, will seek a preliminary injunction in this Court against the enforcement of Examiner Beck's Order. The parties agree that the added burden of litigation which will thus occur is not in the interests of either party and creates the substantial risk of diverting this matter into complex procedural and technical disputes, including appeals, which are unrelated to the substantive issues.

5) The parties further agree that the key statutory issue is whether The United States Jaycees is a "place of public accommodation" within the meaning of Minn. Stat. §363.01, Subd. 18 and that issue ought to be resolved by the Minnesota Supreme Court before this Court proceeds to determine the federal constitutional issues which will arise if the statutory

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\* This document is found at page 93 in the Appendix to the printed Jurisdictional Statement and is therefore deleted from this Appendix.



issue is resolved against The United States Jaycees. If the statutory issue is resolved in favor of The United States Jaycees, this action will be rendered moot and will be subject to dismissal on that ground.

6) The plaintiff has asserted that continued delay in the final disposition of this matter, while the injunction issued by Examiner Back is in force, may create unforeseen and undesirable problems if, after a lengthy delay, this litigation should ultimately be decided in front of The United States Jaycees.

7) The parties are in agreement that, in the interest of preventing injustice due to delay and in avoiding unnecessarily complex litigation arising out of the plaintiff's efforts to secure a stay or preliminary injunction, the core state statutory issue described above should be certified by this Court to the Supreme Court of Minnesota; the parties hereby stipulate that the Court may execute and enter its certification in the form attached hereto.

**JA-31**

**Dated: March 24, 1980**

**MACKALL, CROUNSE &  
MOORE**

**By: CLAY R. MOORE**

**1000 First National Bank  
Building**

**Minneapolis, Minnesota 55402  
and**

**CARL D. HALL, JR.**

**HALL, SUBLETT,**

**McCORMICK & ANDREWS**

**1776 Williams Center**

**Tulsa, Oklahoma 74172**

**Attorneys for Plaintiff**

**The United States Jaycees**

**Dated: March 24, 1980**

**State of Minnesota**

**by WARREN SPANNAUS**

**Attorney General**

**By: RICHARD L. VARCO, JR.**

**Special Assistant**

**Attorney General**

**240 Bremer Building**

**St. Paul, Minnesota 55101**

**Attorney for Defendants**

**Marilyn E. McClure,**

**Commissioner, Minnesota**

**Department of Human**

**Rights, Warren Spannaus,**

**Attorney General of the State**

**of Minnesota and George A.**

**Back, Hearing Examiner of**

**the State of Minnesota**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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Civil No. 4-79-530

---

THE UNITED STATES JAYCEES, a  
non-profit Missouri corporation, on behalf of itself and  
its qualified members,

Plaintiff,

-vs-

MARILYN E. McCLURE, Commissioner,  
Minnesota Department of Human Rights,  
WARREN SPANNAUS, Attorney General of the State of  
Minnesota, and GEORGE A. BECK, Hearing Examiner  
of the State of Minnesota,

Defendants.

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CERTIFICATION OF STATE LAW ISSUE TO  
MINNESOTA SUPREME COURT

On March 20, 1980, the parties appeared before the Court represented by Clay R. Moore, Esq. for the plaintiff The United States Jaycees, and Richard L. Varco, Jr., Special Assistant Attorney General, representing the defendants McClure, Spannaus and Beck in their official capacities. The parties have jointly requested, for the reasons stated in their stipulation attached hereto, that this Court certify a dispositive issue of state law to the Supreme Court of Minnesota. It appears to the Court that such certification will materially advance this litigation to final conclusion.

Based on the representations of counsel, their attached stipulation, and the files and records of this Court, good cause has been shown for the following certification:

The Court hereby certifies to the Supreme Court of the State of Minnesota the question of law desired herein and requests said Supreme Court to answer said question pursuant to Minnesota Statute §480.061.

In conformity with Minnesota Statute §480.061, Subd. 3, the following is stated:

1) *Questions of Law Certified*

Is The United States Jaycees a "place of public accommodation" within the meaning of Minn. Stat. §363.01 Subdivision 18?

2) *Relevant Facts and Nature of Controversy*

The parties have agreed, by signature of their respective counsel hereto, that the evidentiary facts relevant to the question of law presented are those contained in the Order of State Hearing Examiner George A. Beck dated October 9, 1979, a copy of which is attached hereto as Exhibit A and in the transcript and exhibits comprising the record in the state administrative proceeding which gave rise to Examiner Beck's Order of October 9, 1979.

The nature of the controversy is as follows: The State of Minnesota by its Commissioner of Human Rights, has charged The United States Jaycees with a violation of Minn. Stat. §363.03, Subd. 3 and 6 by reason of its By-laws which restrict full voting membership in The United States Jaycees to young men between the ages of 18 and 35, thereby denying such membership to women. Said By-laws also define a local Jaycee chapter to be qualified for continuing chapter membership in The United States Jaycees only if its officers, directors and regular members are young men.

State Hearing Examiner George Beck, on October 9, 1979, after a hearing found The United States Jaycees in violation of Minn. Stat. §363.03, Subd. 3 and enjoined The United States Jaycees in the manner set forth in his attached Order.

The pivotal state law question is whether The United States Jaycees is a "place of public accommodation" within the meaning of Minn. Stat. §363.01, Subd. 18. It appears to this Court, and the parties agree, that there is no controlling precedent in the decision of the Minnesota Supreme Court on this question or the meaning and extent of the definition of "place of public accommodation" as contained in §363.01, Subd. 18.

The above entitled action in this Court was commenced under the federal Civil Rights Act. 42 U.S.C. §1983 28 U.S.C. §§1343, 1331 and 1332 and raises only the question of federal constitutional law which will arise if the state statutes referred to are interpreted by the Supreme Court of Minnesota so as to apply the statutory definition of "place of public accommodation" to The United States Jaycees and to thereby result in a finding that The United States Jaycees' By-laws, and the enforcement of those By-laws, is in violation of Minn. Stat. §363.03, Subd. 3. The plaintiff The United States Jaycees has reserved those federal constitutional issues for decision by this Court pursuant to *England vs. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 11 L.Ed 2d. 440, 84 S.Ct. 461 (1964).

### 3) Dispositive Nature of Question Certified

If the Supreme Court of Minnesota should determine the state statutory interpretation issues favorably to

The United States Jaycees, that decision will be dispositive of this action by rendering this action moot.

If the Supreme Court of Minnesota should determine the issues in favor of the defendants, this Court can then promptly proceed to the question of whether those statutes, as so interpreted and applied, violate the Constitution of the United States in any respect. A decision by the Minnesota Supreme Court on the question certified herein will, therefore, materially advance this action to its final disposition.

The Clerk is directed to prepare a certified copy of this certification, under the seal of this Court and forward the same to the Supreme Court of the State of Minnesota.

It is further ordered that the parties shall forward to the Supreme Court of the State of Minnesota the record in the state proceedings which are the subject of Examiner Beck's Order of October 9, 1979, including the transcript and all exhibits therein.

Dated: March 24, 1980.

DIANA MURPHY

United States District Judge